

## CONSERVATION AGREEMENT

This Conservation Agreement (“**AGREEMENT**” or “**CONSERVATION AGREEMENT**”) is entered into between American River Conservancy, a California nonprofit corporation (“**CONSERVATION ORGANIZATION**” or “**CO**”) and the County of El Dorado (“**COUNTY**”) and Rural Communities United (“**RCU**”). The Effective Date is the Effective Date as provided for in that Compromise Settlement Agreement and Release concurrently entered into between Rural Communities United et al (collectively “**RCU et al.**”) and the County. Collectively, the County, RCU, and the CO are referred to herein as the **Parties**.

### **RECITALS**

**WHEREAS**, RCU and the County have agreed to settle two lawsuits filed in El Dorado County Superior Court (PC20170536 and PC20210189);

**WHEREAS**, in settlement of this litigation, the County has agreed to enter into an agreement with a qualified entity to manage acquisition of biologically important lands in furtherance of the County adopted Oak Resources Management Plan (ORMP);

**WHEREAS**, CO represents that it has the experience and expertise to implement this Agreement; and

**WHEREAS**, the County agrees to set aside a portion of existing and future Oak Resources In-Lieu Mitigation Fees (Resolution 130-2017) in furtherance of this Agreement.

**NOW THEREFORE**, the Parties agree as follows:

### **TERMS**

1. **Recitals.** The Recitals stated above are true and correct and are incorporated by reference herein.
2. **Exercise of Discretion by the CO.** The Parties acknowledge that the ability of the CO to acquire interests in property is impacted by a number of factors, including but not limited to availability of land, seller’s price demands, relative conservation values of competing sites, projections for future lands uses on nearby parcels, and financial support by interested agencies and non-profits. The Parties agree to rely upon and defer to the expertise and sole discretion of the CO as to which property interests are submitted for funding, either in whole or in part, through this Agreement.
3. **Priorities for Acquisition.** The CO shall make commercially reasonable efforts to acquire lands with funding through this Agreement according to the following priorities:

(a) **First priority:** Within 3.5 miles north or south of Highway 50 and where the subject land is determined to be important for north-south wildlife habitat connectivity by a qualified wildlife biologist.

(b) **Second priority:** Within 7 miles north or south of Highway 50 and where the subject land is determined to be important for north-south wildlife habitat connectivity by a qualified wildlife biologist; and in areas with large blocks of undeveloped oak woodlands.

(c) **Third priority:** Within any Important Biological Corridor depicted in ORMP Figure 2, attached hereto as **Exhibit 1**.

(d) **Fourth priority:** Within any Priority Conservation Area depicted in ORMP Figure 2, attached hereto as **Exhibit 1**.

Notwithstanding the foregoing provisions, the decision to seek funding for the acquisition of any particular parcel or easement shall be in the sole and complete discretion of the CO.

#### 4. **County Funding.**

(a) Within thirty (30) calendar days of the discharge of writ of mandate currently pending in El Dorado County Superior Court case number PC20170536, the County shall set aside two hundred fifty thousand dollars (\$250,000.00) (“**One-time Set Aside**”) currently held within the County’s Oak Woodlands Conservation account created by Resolution 130-2017. The One-time Set Aside Funds shall be maintained by the County in a separate account (“**Set Aside Account**” or “**Set Aside Funds**”) to be used for conservation acquisitions authorized by this Agreement.

(b) Beginning July 1, 2021, the County shall deposit twenty percent (20%) of oak woodland mitigation fees collected in each fiscal year by the County pursuant to Resolution 130-2017 (a resolution establishing in-lieu mitigation fees) (“**Percent Set Aside**”) in the Set Aside Account referenced in section 4(a) above. The County’s obligation to deposit the Percent Set Aside in the Set Aside Account shall begin with fees paid to the County beginning July 1, 2021 and ending June 30, 2035. The County shall deposit the Percent Set Aside funds for each fiscal year no later than one hundred eighty (180) days from the end of each fiscal year (“**Outside Funding Date**”). Within thirty (30) days of the Outside Funding Date, the County shall notify the CO of the balance in the Set Aside Account for the prior fiscal year.

#### 5. **Application Requests for Funding.**

(a) For the purpose of facilitating the successful processing of applications for funding, the CO at least once a year shall update the Director of the Planning and Building Department (“**Director**”), or designee, as to potential acquisition sites and anticipated acquisition dates. Prior to filing a complete application for funding as provided for in section 5(b) below, the CO shall file a written request with the Director

for a pre-application determination of consistency as described herein. Concurrent with its request, the CO shall include all relevant information and analysis necessary to support a determination of consistency. The Director shall consider the information and analysis provided by the CO and shall make a written determination of consistency within sixty (60) days after the CO files the pre-application request including all supporting information. The consistency evaluation shall address whether the conservation interest in land to be funded is consistent with the “Biological Resources Policy Update” (approved on October 24, 2017, as may be amended from time to time,) consisting of: (i) the Oak Resources Conservation Ordinance; (ii) the Oak Resources Management Plan; (iii) Amendments to the General Plan Biological Resources Policies, Objectives and Implementation Measures in the General Plan Conservation and Open Space Element; (iv) the In Lieu Mitigation Fees and the Oak Resources In Lieu Fees Nexus Study; and (v) related mitigation measures (if any). ) The Director’s consistency determination shall be supported by substantial evidence and shall not be unreasonably denied. The Director’s affirmative determination of consistency shall be valid for eighteen (18) months unless there is a material change to the underlying facts and analysis that supported the consistency determination.

(b) An application for funding shall be filed with the Director and shall include: (i) the Director’s determination of consistency as described in section 5(a) above, (ii) a current title report (dated within two (2) weeks of submittal of the completed application for funding); (iii) a study dated within ninety (90) days of submittal attesting to the significant biological values consistent with section 4.1 and 4.3 of the ORMP, as applicable; (iv) a funding plan reflecting the CO’s strategy to obtain sufficient funding so as to permit close of escrow and for long term endowment; (v) a draft long term management plan; (vi) any proposed covenants to be recorded upon closing of escrow; and (vii) proposed CEQA documentation or exemption. An application for funding that includes the elements described in (i)-(vii) of this section 5(b) is deemed “complete.” The Director may request supplemental information pertaining to items (i) - (vii) but any such request shall not extend the Board’s 90-day period to act on a funding request set forth in section 5(c) below unless the Conservation Organization consents to the extension. The Director in his or her discretion can waive the requirements in items (i) - (vii). Notwithstanding the foregoing provisions, the CO shall have the option to defer delivery of the long-term management plan until after final approval of the application for funding by the CO’s Board of Directors.

(c) The Board of Supervisors (“Board”) shall act upon the application for funding within ninety (90) days of the filing of a complete application for funding. The Board’s decision regarding approval of an application for funding shall not be delayed beyond ninety (90) days after receipt of the complete application for funding or unreasonably denied or conditioned. By way of illustration, the County may condition its approval of funding upon the requirement that escrow close within eighteen (18) months following the Board’s funding approval.

(d) If the Board of Supervisors approves the application for funding, the County shall transfer the funds into the escrow account, described below, within thirty

(30) days of the Board approval. In the event that escrow is contingent upon third party funding, the County is not required to transfer its funds into escrow until it receives written confirmation from the CO that all funding sources are ready to fund, subject to commercially reasonable closing contingencies.

(e) Condition Precedent to the Distribution of Funds. No Set-Aside Funds shall be released by the County until the trial court discharges the writ in PC20170536.

6. **Allowed Expenses.** Set Aside Account funds can only be used to (i) underwrite the cost of the interest in land as reflected in the purchase price in the purchase and sale agreement; (ii) endowment funding for the long-term maintenance and monitoring; and (iii) for necessary soft costs (including but not limited to appraisals, mapping, staff salaries, transaction filing fees, legal fees, etc.) as long as such necessary soft costs do not exceed twenty percent (20%) of the funds transferred.

7. **Third Party Funds.** The CO shall use reasonable efforts to secure third-party matching funds for each conservation purchase. The County shall not deny the transfer of Set Aside Account funds for conservation purchases if the CO is unable to secure such matching funds.

8. **Escrow.** Upon determining to fund a specific acquisition, the County shall transfer Set Aside Account funds in the amount approved by County to the third-party escrow agent responsible for the acquisition transaction within the time frame described in section 5(d) of this Agreement, with release of the funds contingent upon close of escrow. The County reserves the right to submit escrow instructions consistent with the terms of this Agreement. In the event of a conflict, the terms of this Agreement shall prevail. The County shall have the right to approve the form of conservation easement and/or covenants, such approval not to be unreasonably denied, conditioned, or delayed.

9. **Termination of County Obligation to Release Funds From the Set Aside Account.** The CO shall have until January 1, 2037, to submit complete application requests for funding to the County. Effective July 1, 2037, the remaining unallocated funds shall be vested in and used by the County as authorized by law.

10. **Ineligible Lands for Acquisition with Set Aside Funds.** Lands designated in the County General Plan for commercial or multi-family purposes are ineligible for acquisition through this Agreement unless such restriction is waived by the County, as may be determined by the County in its sole and absolute discretion.

11. **Assignment.** The CO may assign its rights and obligations under this Agreement to a qualified conservation organization with similar expertise and qualifications. Any assignment shall be in writing, on a form approved by the County Counsel. The County shall have the right to approve any such assignment, and such approval shall not to be unreasonably denied, conditioned, or delayed. Assignment of any rights or obligations under this Agreement shall completely relieve the CO of such rights and obligations which arise after the effective date of the assignment.

12. **Breach by the County.**

(a) In the event of any breach by the County of its obligations under this Agreement, the CO's sole remedy, following the notice and opportunity to cure as provided for in section 16 below, shall be an action for specific performance.

(b) RCU shall have limited rights to enforce this Agreement. Subject to the notice and cure provisions provided for in section 16 below, RCU's rights to enforce this Agreement against the County are limited to only the following provisions: (i) the County's failure to provide the annual accounting within one hundred eighty (180) days of the end of the fiscal year; (ii) the Director's unreasonable determination of inconsistency or the Director's failure to act pursuant to section 5(a) of this Agreement; (iii) the Board of Supervisors' unreasonable denial or conditioning of approval of a request for funding or the Board of Supervisors' refusal to act on a request for funding within ninety (90) days pursuant to section 5(c) of this Agreement,; and (iv) the County's failure to transfer Set Aside Account funds in the amount approved by County to the third-party escrow agent responsible for the acquisition as provided in Sections 5(d) and 8, above.

13. **Funding Source.** The sole source of the Set Aside Account funds is the mitigation fees collected by the County pursuant to the County's Oak Resources In-Lieu Mitigation Fee program. No other County funds or revenue sources, including but not limited to the County General Fund, shall be liable to fund the Set Aside Account.

**GENERAL PROVISIONS**

14. **Advice of Attorney.** Each Party warrants and represents that in executing this Agreement, it has relied on legal advice from the attorney of its choice; that the terms of this Agreement have been read and its consequences (including risks, complications, and costs) have been completely explained to it by that attorney; and that it fully understands the terms of this Agreement. RCU, County, and CO further acknowledge and represent that, in executing this release, they have not relied on any inducements, promises, or representations made by the other Party not set forth in this Agreement.

15. **Contract Administrator.** The County officer or employee with responsibility for administering this Agreement is Karen Garner, Director, Planning and Building Department or her successor.

16. **Breach.** The Parties agree that specific performance is the sole remedy for any breach of this Agreement. The County's failure to fund the Set Aside Account as required under section 4 of this Agreement shall constitute a separate breach. Any Party alleging any breach of this Agreement shall give written notice of the alleged breach to the breaching Party, and the breaching Party shall have sixty (60) calendar days within which to remedy the breach, or such longer period as the Parties may agree to. The Party alleging the breach may not unreasonably

refuse to accept the other Party's cure of an alleged breach of an affirmative obligation set forth in this Agreement.

17. **Authority.** Each person signing this Agreement on behalf of a Party hereby represents that he or she has complete authority to bind that Party to the terms and conditions of this Agreement.

18. **Entire Agreement.** This Agreement contains the entire agreement between the Parties.

19. **Governing Law.** This Agreement is entered into, and shall be construed and interpreted, in accordance with the laws of the State of California.

20. **Indemnity.** To the fullest extent permitted by law, the CO shall defend at its own expense, indemnify, and hold the County harmless, its officers, employees, agents, and volunteers, against and from any and all liability, claims, suits, losses, damages, or expenses of every name, kind, and description, including attorney's fees and costs incurred, brought for or on account of, injuries to or death of any person, including but not limited to workers, County employees, and the public, or damage to property, or any economic or consequential losses, which are claimed to or in any way arise out of or are connected with the acts or omissions of CO or its officers, agents, or employees in rendering the services, operations, or performance in connection with this Agreement, except for liability, claims, suits, losses, damages, or expenses arising from the sole negligence or willful acts of the County, its officers and employees, or as expressly prescribed by statute. This duty of CO to indemnify and save County harmless includes the duties to defend set forth in California Civil Code Section 2778.

21. **Insurance.** CO shall provide proof of a policy of insurance satisfactory to County's Risk Management Division and documentation evidencing that CO maintains insurance that meets the following requirements:

(a) Full Workers' Compensation and Employers' Liability Insurance covering all employees of CO as required by law in the State of California.

(b) Commercial General Liability Insurance of not less than \$1,000,000 combined single limit per occurrence for bodily injury and property damage and a \$2,000,000 aggregate limit.

(c) Automobile Liability Insurance of not less than \$1,000,000 is required in the event motor vehicles are used by CO in performance of the Agreement.

(d) Omitted.

(e) CO shall furnish a certificate of insurance satisfactory to County's Risk Management Division as evidence that the insurance required above is being maintained.

(f) The insurance will be issued by an insurance company acceptable to County's Risk Management Division or be provided through partial or total self-insurance likewise acceptable to the Risk Management Division.

(g) CO agrees that the insurance required herein shall be in effect at all times during the term of this Agreement. In the event said insurance coverage expires at any time or times during the term of this Agreement, CO agrees to provide, at least thirty (30) days prior to said expiration date, a new certificate of insurance evidencing insurance coverage as provided for herein for not less than the remainder of term of the Agreement, or for a period of not less than one (1) year. New certificates of insurance are subject to the approval of Risk Management and CO agrees that no work or services shall be performed prior to the giving of such approval. In the event CO fails to keep in effect at all times insurance coverage as herein provided, County may, in addition to any other remedies it may have, terminate this Agreement upon the occurrence of such event.

(h) The certificate of insurance must include the following provisions stating that:

1. The insurer will not cancel the insured's coverage without thirty (30) days prior written notice to County; and

2. The County of El Dorado, its officers, officials, employees, and volunteers are included as additional insured, on an additional insured endorsement, but only insofar as the operations under this Agreement are concerned. This provision shall apply to the general liability policy.

(i) CO's insurance coverage shall be primary insurance in respect to County, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by County, its officers, officials, employees, or volunteers shall be in excess of CO's insurance and shall not contribute with it.

(j) Any deductibles or self-insured retentions must be declared to and approved by County. At the option of County, either: The insurer shall reduce or eliminate such deductibles or self-insured retentions in respect to County, its officers, officials, employees, and volunteers; or CO shall procure a bond guaranteeing payment of losses and related investigations, claim administration, and defense expenses.

(k) Any failure to comply with the reporting provisions of the policies shall not affect coverage provided to County, its officers, officials, employees, or volunteers.

(l) The insurance companies shall have no recourse against the County of El Dorado, its officers, and employees or any of them for payment of any premiums or assessments under any policy issued by any insurance company.

(m) CO's obligations under this Agreement are not limited to the foregoing insurance requirements and shall survive the expiration of this Agreement.

(n) In the event CO cannot provide an occurrence policy, CO shall provide insurance covering claims made as a result of performance of this Agreement for not less than three (3) years following completion of performance of this Agreement.

(o) The certificate of insurance shall meet such reasonable additional standards as may be determined by the contracting County department, either independently or in consultation with County's Risk Management Division as essential for protection of County.

(p) CO shall ensure that all subconsultants authorized pursuant to this Agreement shall maintain workers' compensation, general liability, automobile liability, and professional liability insurance as specified above and shall provide County with proof of same if requested.

22. **Counterparts.** This Agreement may be executed in counterparts, each of which shall constitute an original, and all of which taken together shall constitute one and the same instrument.

23. **Notices.** All notices required under this Agreement shall be in writing and may be served either personally or by registered or certified mail (return receipt requested) or by email (if stated below) with written confirmation by the receiving Party that the email was received. Any Party may at any time, by giving ten (10) days' written notice to the other Party, designate any other person or address in substitution of the address to which such notice shall be given. All notices required under this Agreement shall be given to the Parties at their addresses set forth below:

**If to Conservation Organization:**

Executive Director  
American River Conservancy  
P.O. Box 562  
Coloma, CA 95613

**If to County of El Dorado:**

Director, Planning and Building Department County of El Dorado  
2850 Fairlane Court  
Placerville, CA 95667

**If to RCU:**

Email address for RCU: [contactRCU@gmail.com](mailto:contactRCU@gmail.com)  
Unless and until updated by RCU by notice to County and CO.



24. **Amendment.** This Agreement may not be amended or modified by the Parties except in writing executed by all Parties. No waiver of any provision of this Agreement shall be binding unless executed in writing by the Party making the waiver. No waiver of any provisions of this Agreement shall be deemed, or shall constitute, a waiver of any other provision, whether or not similar. Nor shall any waiver constitute a continuing waiver.

25. **Retention of Discretion.** Except as expressly provided for within this Agreement, nothing in this Agreement shall restrict the discretion of the County.

26. **Severability.** If any term of this contract is held by a court of competent jurisdiction to be void or unenforceable, the remainder of the contract terms shall remain in full force and effect and shall not be affected.

27. **Termination.** This Agreement terminates on June 30, 2037.

Executed at Placerville, California.

**Conservation Organization**

By: \_\_\_\_\_

Its:       Executive       Director

Date: \_\_\_\_\_

**Rural Communities United**

By: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_

**Board of Supervisors for the County of El Dorado**

\_\_\_\_\_  
Chair

\_\_\_\_\_  
Date

**ATTEST**

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Clerk of the Board

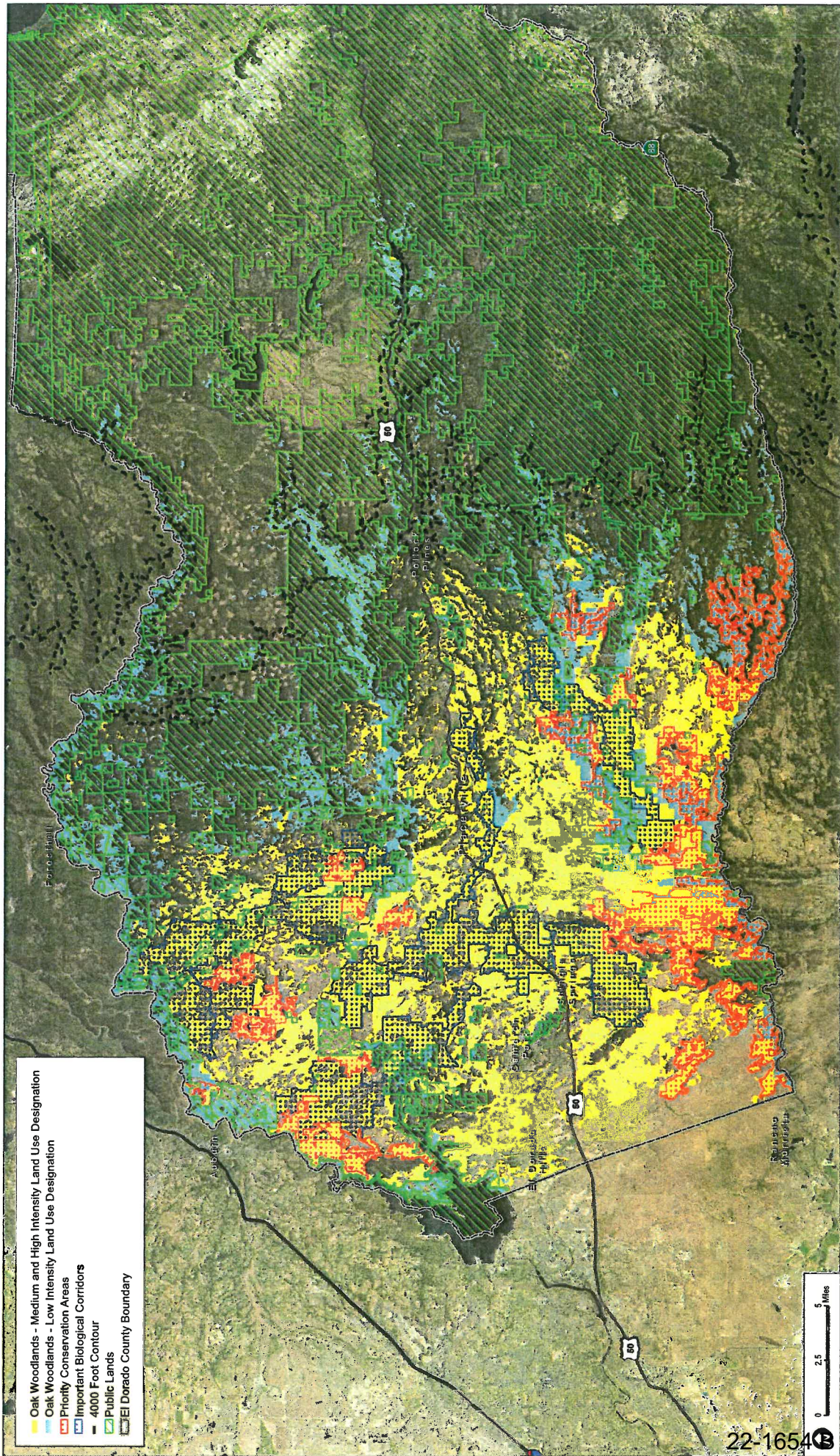
**APPROVED AS TO FORM**

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Abbott & Kindermann, Inc.

# **EXHIBIT 1**





- Oak Woodlands - Medium and High Intensity Land Use Designation
- Oak Woodlands - Low Intensity Land Use Designation
- Priority Conservation Areas
- Important Biological Corridors
- 4000 Foot Contour
- Public Lands
- El Dorado County Boundary



SOURCE: Bing Maps 2014; FRAP 2006; El Dorado County 2014

**UJDEK**  
8228-01

Draft Oak Resources Management Plan

FIGURE 2

Priority Conservation Areas, Oak Woodlands, and Public Lands in El Dorado County

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